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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-02-054-50638 Office: California Service Center

Date:

IN RE: Petitioner:
Beneficiary:

JAN 31 2003

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a business that develops, manufactures, maintains, and sells motorcycle parts with 38 employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as a mechanical engineer for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform services in the specialty occupation.

On appeal, the petitioner's president submits a statement and additional documentation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the record did not contain sufficient evidence establishing that the beneficiary's fifteen years of work experience are the equivalent of a bachelor's degree in mechanical engineering. On appeal, the petitioner's president provides additional detailed descriptions and statements relating to the beneficiary's qualifications.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary graduated from the Numata Public High School in Saitama, Japan. The beneficiary does not possess a baccalaureate or higher degree in a specific specialty. Clearly, the beneficiary is not qualified to perform services in a specialty occupation based upon his education alone.

The record shows that the beneficiary has more than fifteen years of relevant work experience. The beneficiary was employed for one year as an assistant mechanical engineer, and the subsequent nine years as a mechanical engineer by the Yoshimura Japan Co., Ltd., from December 1985 to December 1995. The beneficiary was then employed as a mechanical engineer by Honda Race Corporation from January 1996 through the date the petition was filed. The petitioner has submitted affidavits, letters, descriptions, and statements from employers, supervisors, and peers to demonstrate that the beneficiary has performed the services of a mechanical engineer. The record contains sufficient evidence to recognize that the beneficiary possesses expertise in the specialty through progressively responsible positions directly related to the specialty.

The record contains two evaluations of the beneficiary's work experience. Both evaluators state that for the purposes of determining degree equivalency in reviewing the beneficiary's employment, a standard of three years of work experience equal one year of university-level credit has been utilized. The evaluators conclude that the beneficiary possesses the equivalent of a bachelor's degree in mechanical engineering as awarded at an institution of higher learning in the United States as a result of

his fifteen years of experience as an assistant mechanical engineer and a mechanical engineer for Yoshimura Japan Co., Ltd., and Honda Race Corporation. These conclusions appear reasonable and shall be accepted. Accordingly, it is concluded that the petitioner has overcome the sole basis of the director's denial and shown that the beneficiary qualifies to perform the duties of the offered position.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The duties of the proffered position are described as:

1. Plan and design tools, parts, engines, machines, and other mechanically functioning equipment for racing machines.

2. Grind, [r]epair, install, set up, operate, and maintain equipment as well as centralized heat, gas, water, and steam systems.
3. Test and report each result of the test for equipment for racing machines, parts, and other related equipment to the executives.
4. Responsible for race preparation
 - Conduct thorough inspection in order to confirm that all components are brought up to Race Prep specifications, and professionally assembled.
5. Responsible for fuel setting, repair, maintenance[,] of racing motorcycles at the racing circuit.
6. Teach and supervise assistant mechanical engineers how to install, operate, maintain, and repair the special equipment properly.
7. Conduct other miscellaneous tasks as assigned.

The offered position is that of a mechanical engineer working with competitive racing motorcycles and their component parts. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at page 114 notes that mechanical engineering is one of the broadest engineering disciplines with some mechanical engineers specializing in energy systems machinery such as electrical generators, internal combustion engines, and steam and gas turbines. At page 104, the Handbook finds that the usual requirement for employment as an engineer is a baccalaureate or higher degree in engineering. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's decision is withdrawn and the petition is approved.